

Serial No. 10/619,956
Art Unit 1772

Amendment A

Remarks:

Responsive to the Official Action mailed November 8, 2004, Applicant respectfully requests reconsideration, reexamination and allowance of claims 1-9 and 18-27 in view of the above amendments and the following remarks.

First, Applicant acknowledges that claims 10-17 have been withdrawn and reserves the right to present these claims in a later divisional application.

Next, Applicant respectfully requests that the Examiner present Knox, III et al., U.S. Patent No. 4,851,272 in a PTO-892 form and make this patent officially of record in this application. The Knox patent does not appear on either the Applicant submitted PTO-1449 or the Examiner's Notice of References Cited PTO-892 form.

As to the merits of the Action, first, the Examiner has rejected claims 1 and 18 under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has noted that the phrase "over-molded sealing media" in claims 1 and 18 is unclear, rendering the claims vague and indefinite. The Examiner states that it is unclear from the specification, claims and the drawings what is meant by the above term, and queries whether it is part of the flexible packaging material covering a portion of the flange, an adhesive type material that attaches the spout to the flexible material, or just part of the flange or spout? Further, the Examiner questions: how is it different than the packaging material and what does it have to do with over molding?

Applicant has amended claims 1 and 18 to more clearly point out that the sealing media is molded over and onto the first side of the flange. These claims already recite that the sealing media material is different from the spout/flange material in that it is of a lower density than the first or spout/flange material. Accordingly, Applicant has deleted the offending "over molded" language and submits that claims 1 and 18 as amended are clear and definite and respectfully requests that the Examiner withdraw this basis for rejection.

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Next, the Examiner has rejected claims 1- 6, 18, 19 and 23 - 27 under 35 U.S.C. 102(b) as anticipated by Brown, U.S. Patent No. 5,203,470. The Examiner characterizes Brown as disclosing a flange having first and second sides with a spout extending upwardly from the first side of the flange. The Examiner continues that Brown discloses a sealing media, heat stakes, molded to the first side of the flange. Further, the Examiner states that, as seen in Figure 1, the flange and spout are integral with one another and are formed from a single first material, high density polyethylene, while the material molded or sealed over the flange is made from an ethylene octene material such as liner low density polyethylene.

Applicant notes that the Examiner characterizes the material of the stakes as over molded, or covering the flange and states that this material is formed from a second material different from the first material and with a lower density.

The Examiner further asserts that since the first and second materials are a high density polyethylene and an ethylene octene, it is inherent that the first material would have a melting point temperature about 110 °F greater than the melting point temperature of the second material (265 °F as compared to 155 °F), with the second material having a density of about 0.875 g/cc.

The Examiner has next rejected claims 7-9 and 20-22 under 35 U.S.C. 103(a) as unpatentable over Brown in view of Knox, III et al., U.S. Patent No. 4,851,272. The Examiner concedes that Brown fails to disclose that the first material is an ethylene vinyl alcohol copolymer and the second material is formed from a composition including an ethylene-octene copolymer in a concentration of about 75 percent by weight of the second material and a maleated polyolefin present in a concentration of about 25 percent by weight. The Examiner however, has taken the position that Knox teaches both a maleated polyolefin, a polyolefin mixed with an acid, and an ethylene octene copolymer, linear low density polyethylene, in a second material covering the flange of the spout in which the maleated polyolefin has a weight percent of about 18 for the purpose of forming a material that is strong enough to withstand jostling without leaking the product.

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The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the maleated polyolefin along with the ethylene octene copolymer of Knox, in the spout and flange (and stakes) of Brown, in order to form a material that is strong enough to withstand jostling without the product leaking.

Applicant has amended claims 1 and 18 to more clearly define the structure of the present invention. Specifically, the claims indicate that the sealing media is configured for disposition between the first side of the flange and the flexible packaging material when the fitment is mounted and sealed to the flexible packaging material such that the sealing media is heat activated to effectively weld the fitment to the flexible packaging material (claim 1), and that the sealing media is disposed between the first side of the flange and the flexible packaging material when the fitment is mounted and sealed to the flexible packaging material such that the sealing media is heat activated to effectively weld the fitment to the flexible packaging material (claim 18). Applicant submits that this is clearly distinguishable from the art of record.

The Brown patent simply fails to disclose the claimed structure. The fitment of Brown uses a pair of stakes or spikes that project upwardly from the spout flange. When the fitment is sealed to the packaging material, the stakes are projected *through* the packaging and are then melted or otherwise sealed to the packaging material on a side of the material *opposite* of the flange.

The present fitment, on the other hand, uses an over-molded (or sealing) material that is molded onto the flange on the side of the flange that is then sealed to the packaging material. This is in complete contrast to the fitment of Brown. The present fitment has a number of advantages over that of the fitment of Brown. First and foremost, the Brown fitment requires that additional openings be formed in the packaging material, other than the fitment opening. These multiple openings pose an extreme disadvantage that is overcome by the present invention. It is clear from a study of the figures of Brown as compared to the presently claimed invention, that eliminating the two spike-accommodating openings of Brown would serve to reduce the

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opportunity for leaks (from the package) and product contamination (by ingress of undesirable materials into the package).

Moreover, it is also clear that the use of a sealing material between the flexible material and the flange would provide a seal having a higher level of confidence (and integrity) than one that is formed over one of the materials that is sealed to the other. Furthermore, there is nothing in either the Brown or Knox patents that would suggest the presently claimed structure and sealing media placement.

In conclusion, Applicant submits that as amended, claims 1-9 and 18-27 are allowable over the art of record and respectfully and earnestly solicits early indication of same.

No new matter has been added by way of the amendments and remarks made herein. Reconsideration of the rejected claims and allowance of all the pending claims is respectfully requested. In the event that there are any remaining issues that can be addressed and expedited by telephone conference, the Examiner is invited to telephone the undersigned at the number indicated below.

Dated:

May 6, 2005
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Respectfully submitted,

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